

Gregory Oliver, II

v.

City and County of San Francisco, et al.

Case No. C07-02460 JL

Exhibit A

to

**Defendant's Opposition to Plaintiff's
Motion to Compel Production of Documents**

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CITY AND COUNTY OF SAN FRANCISCO,

HEATHER FONG, IN HER OFFICIAL CAPACITY, AND

JESSE SERNA

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY OLIVER, II,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation;
HEATHER FONG, in her capacity as
Chief of Police for the CITY AND
COUNTY OF SAN FRANCISCO; JESSE
SERNA, individually, and in his capacity
as a police officer for the CITY AND
COUNTY OF SAN FRANCISCO; and
San Francisco police officers DOES 1-25,
inclusive,

Defendants.

Case No. C07-02460 JL

**DECLARATION OF LT. MICHAEL
STASKO RE PLAINTIFF'S
DISCOVERY DEMANDS**

Date Action Filed: May 8, 2007
Trial Date: None Set

I, Michael Stasko, declare as follows:

1. I am a Lieutenant in the San Francisco Police Department. I am the Commanding Officer of the Legal Division of the San Francisco Police Department and, as such, am responsible for legal matters involving the San Francisco Police Department, including lawsuits such as this one. I have been employed as a San Francisco Police Officer for ²⁷~~26~~ years and have served in a variety of assignments with the San Francisco Police Department. I have personal knowledge of the contents

1 of this declaration, and, if called upon to testify, I could and would testify competently to the
2 contents of this declaration.

3 2. I understand that Plaintiff has served discovery requests seeking certain documents
4 and information relating to S.F.P.D. Officer Jesse Serna.

5 3. The materials and information encompassed by Plaintiff's requests include: (1)
6 complaints of use of force relating to the indicated officers for a five-year period before August 20,
7 2006; (2) documents and information about whether discipline was imposed as a result of the
8 incident in this case; (3) training materials relating to the indicated officers; (4) documents and
9 information relating to investigation and analysis by the Department and the Office of Citizens
10 Complaint relating to the incident in this case; and (5) the complete personnel files of the indicated
11 officer, including material relating to any discipline imposed on the officer over time.

12 4. I have personally reviewed the personnel files of the identified officer. The San
13 Francisco Police Department has maintained the confidentiality of the documents described in
14 greater detail below, in compliance with California law.

15 5. I am familiar with the types of information contained in a San Francisco Police
16 Officer's personnel file. San Francisco Police Officers understand and expect that information from
17 their personnel records and other private information may not be voluntarily disclosed by the San
18 Francisco Police Department. Statutes such as Penal Code sections 146e, 1328.5 and California
19 Vehicle Code section 1808.4 explicitly recognize that the disclosure of certain information about law
20 enforcement officers can jeopardize their safety and the safety of their families. Further, California
21 Evidence Code Section 1040 sets up a strict procedure requiring a showing of "good cause" for the
22 disclosure of a peace officer's personnel records and requires a court order before any such personnel
23 records may be disclosed. In view of the clear dangers of law enforcement work, the San Francisco
24 Police Department has an abiding interest in assuring the safety and security of its officers and their
25 families to the fullest extent possible. Accordingly, various policies and procedures of the San
26 Francisco Police Department also impose a duty to maintain the confidentiality and security of
27 information from its officers' personnel records.
28

1 6. A court order to disclose all or significant portions of an officer's personnel file would
2 have severe consequences for the San Francisco Police Department. Regardless of the Court's best
3 efforts to maintain the confidentiality of disclosed records, the affected officers would feel that their
4 legal right to personal privacy and dignity has been compromised. Disclosure would cause officers
5 who are not defendants in this case to feel insecure about their safety and privacy and, as a result, the
6 morale of the San Francisco Police Department would suffer. Any decline in morale adversely
7 affects the San Francisco Police Department in that its ability to attract and retain the most qualified
8 individuals.

9 7. The same grave concerns described above with respect to personnel records in
10 general also are present with respect to records of administrative investigations and investigations of
11 the Office of Citizen Complaints (OCC). Production of OCC materials would impinge on the
12 privacy expectations of officers and people who file complaints with OCC. Production of OCC
13 materials also would undermine the effective operation of the Department, as described above.

14 8. Regarding administrative investigations, the San Francisco Police Department must
15 be able to conduct its own internal investigations without fear of having the results of such
16 investigations publicly disclosed. If such records of administrative investigations are disclosed, then
17 the San Francisco Police Department's ability effectively to investigate its officers will be severely
18 curtailed, if not completely destroyed. The need for confidentiality of internal investigations is even
19 more important than the need for confidentiality of performance reviews described above.

20 9. The above facts highlight the critical need for the confidentiality of various personnel
21 records of the San Francisco Police Department. Such confidentiality best serves the public interest
22 in allowing the San Francisco Police Department to hire and retain the best individuals to provide
23 law enforcement services.

24 10. While official information and other confidential information contained in the San
25 Francisco Police Department's personnel records and other records may be subject to disclosure
26 under certain limited circumstances, the consequences to the public and the individual officers of
27 any such disclosure must be meaningfully considered by courts and other tribunals under federal and
28 state law.

1 11. I respectfully urge this Court to weigh carefully the above-described specific reasons
2 for maintaining the confidentiality of such personnel records against Plaintiff's request to review the
3 records of the individual officer, which are unrelated to Plaintiff's detention that forms the basis for
4 his lawsuit against the officer.

5 12. In the event that this Court has any question whether any personnel records of the
6 officers should be disclosed, I further request this Court conduct an *in camera* inspection of such
7 records before ordering any disclosure.

8 13. In the event that this Court orders any disclosure of any personnel records following
9 its *in camera* inspection, I further request that this Court fashion a protective order precluding any
10 disclosure or dissemination of any records, documents or information ordered disclosed for any
11 purpose other than the express and specific purpose for which this Court has ordered such disclosure,
12 and for such other safeguards and sanctions as this Court deems proper and that any disclosure order
13 relative to discovery sought by Plaintiff be restricted to distribution to counsel for Plaintiff only,
14 absent a further order allowing distribution beyond counsel for Plaintiff. Such a protective order
15 also should require counsel for Plaintiff to return all copies of all disclosed documents upon the
16 conclusion of Plaintiff's lawsuit.

17 14. Should this Court order the production to Plaintiff of any document within the files
18 inspected by the Court, I request the Court also require all personal information regarding the
19 officer, such as his/her social security, driver's license number, address, etc. be redacted prior to
20 production.

21 I declare under penalty of perjury under the laws of the State of California and the United
22 States that the preceding declaration is true, and that this declaration was executed on November
23 26, 2007, in San Francisco, California.

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LIEUTENANT MICHAEL STASKO

OLIVER V. CCSF, ET AL. – US DISTRICT COURT NO. C07-02460 JL**PROOF OF SERVICE**

I, CARLA RAMOS, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On November 26, 2007, I served the attached:

DECLARATION OF LT. MICHAEL STASKO RE PLAINTIFF'S DISCOVERY DEMANDS

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

John L. Burris, Esq.
Benjamin Nisenbaum, Esq.
Law Offices of John L. Burris
Airport Corporate Centre
7677 Oakport Street, Suite 1120
Oakland, CA 94621
Telephone: (510) 839-5200
Facsimile: (510) 839-3882
Counsel for Plaintiff

and served the named document in the manner indicated below:

- ☒ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.
- ☐ **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.
- ☐ **BY OVERNIGHT DELIVERY:** I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the San Francisco City Attorney's Office for sending overnight deliveries. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be collected by a courier the same day.
- ☐ **BY FACSIMILE:** Based on a written agreement of the parties to accept service by fax, I transmitted true and correct copies of the above document(s) via a facsimile machine at telephone number (415) 554-3837 to the persons and the fax numbers listed above. The fax transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and a copy of the transmission report ☐ is attached or ☐ will be filed separately with the court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed November 26, 2007, at San Francisco, California.


CARLA RAMOS